

**S U M M A R Y**  
**OF THE**  
**GOVERNMENT DECREE**  
**16/2004 (II. 6.)**

**ON THE LICENSING OF THE EXPORT, IMPORT, TRANSFER AND TRANSIT OF MILITARY EQUIPMENT  
AND TECHNICAL ASSISTANCE**

The foreign trade in military items has since 1991 been regulated in Hungary. On 1<sup>st</sup> of May 2004, i.e. on Hungary's accession day to the European Union, the Government decree 48/1991 (III.27.) was superseded by the "Government decree 16/2004 (II. 6.) on the licensing of the export, import, transfer and transit of military equipment and technical assistance".

The new legislation does not change the substance of the Hungarian licensing system. It remains of individual character, which means that „open” or „general” licences do not exist in the Hungarian export control system of conventional arms. The 3-tier licensing system is a very strict procedural sequence, where the listed stages are non-interchangeable:

1. Activity Licence (i.e. registration of traders)
2. Those registered traders planning to engage in business talks with foreign partners have to obtain a Licence for Negotiation in advance that allows proceeding with negotiations and to conclude a contract.
3. Then, to perform a contract, the applicant has to obtain a Contract Licence (authorization of export/import).

All applications are assessed on a case-by-case basis and the licences are issued by the Hungarian Trade Licensing Office. In the decision making process, the Office is backed up by the expertise worked out by the Inter-agency Committee on the Licensing of Foreign Trade in Military Equipment. The Committee's chairman is the Director of the Hungarian Trade Licensing Office, its members are designated by the minister heading the Prime Minister's office, the ministers of interior, defence, foreign affairs, economy and transport and the minister of Finance (as superior to Customs and Finance Guard).

According to the Government Decree 16/2004 (II. 6.) the **export and transit** of military equipment and technical assistance is **not permitted to countries**

- (a) where there is armed conflict,
- (b) where armed conflict threatening international peace and security is expected to take place, and where the UN SC, the Council of EU or the OSCE have called upon the parties concerned to resolve the conflict through peaceful negotiations, or has declared an embargo,
- (c) where it would be contrary to the principles of the European Union's Code of Conduct on Arms Export (adopted by the Council of the EU on 8<sup>th</sup> June 1998).

Albeit the Code is a politically binding document in the EU at present Hungary has among the first countries made it legally binding by importing it into her national legislation.

In order to control arms **brokering** and to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the European Union's Code of Conduct on Arms Exports, the Government decree 16/2004. (II.6.) takes into account the recommendations and Best Practice Guidelines of the relevant international organizations and the Common Position 2003/468/CFSP on the control of brokering adopted by the Council of the European Union on 23 June 2003.

Article 2 Paragraph 2 c) of the Government decree says “in order to act as a representative, agent, broker or intermediary in respect of military equipment or technical assistance, whether within or outside the territory of the Republic of Hungary, the licenses required are: activity licence, negotiating licence and contract licence.”

It means that Hungary controls brokering activities both inside and outside of her territory, carried out by brokers who are Hungarian residents or established in the territory of the Republic of Hungary.

As well as in case of exports, in the case of brokering all applications are assessed, inter alia, against the provisions of the European Union’s Code of Conduct on Arms Exports. The Hungarian Trade Licensing Office keeps records for a minimum of 10 years of all persons and entities which have obtained a licence for brokering activities. Also, a register of arms brokers is established, but the registration or authorisation to act as broker does not in any case replace the requirement to obtain the necessary license or written authorisation for each transaction. When assessing the applications to act as brokers, the Hungarian Trade Licensing Office takes into account the records of past involvements in illicit activities by the applicant.

The Government Decree incorporates regulations for **transit** shipments, applying the same procedural rules as in the case of exports. It means that all transit applications have to be submitted in advance and are assessed with equal scrutiny, case-by-case and against the same criteria as export applications. Only companies established in Hungary are entitled to apply for transit licences. The transit licence in case of lethal military equipment, live ammunition, explosives and other dangerous goods obligates the responsible shipper for armed security escort along the transit route from the point of entry up to the point of exit.

The consolidated **Hungarian military list** (CHML – i.e. the Annex of the Government Decree 16/2004) includes the full range of equipment and technology as contained in the Common Military List of the European Union (CML) adopted in December 2003 and, in addition, imposes control on a number of items not listed in the CML such as

- Chapter 23: Instruments of coercion and crime surveillance and
- Chapter 24: Secret-service devices.

The CHML stipulates furthermore that

- regarding the anti-personnel land mines it is necessary to take into account the requirements of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction signed in Oslo on 18<sup>th</sup> September 1997 (Chapter IV, Technical note 2);
- export and import licences can only be granted for explosives that meet the requirements stipulated in the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed in Montreal on 1<sup>st</sup> March 1991 (Chapter VIII, N.B. 2).

For more information, including the full text of the Government decree and its Annex, see URL<<http://www.mkeh.hu/tev/fegyverek/fegyverekenglish.html>

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